

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

STATE OF MISSISSIPPI; STATE OF ALABAMA; STATE OF ARKANSAS; COMMONWEALTH OF KENTUCKY; STATE OF LOUISIANA; STATE OF MISSOURI; and STATE OF MONTANA,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as Secretary of Health and Human Services; THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; CHIQUITA BROOKS-LASURE, in her official capacity as Administrator of the Centers for Medicare and Medicaid Services; THE CENTERS FOR MEDICARE AND MEDICAID SERVICES; THE UNITED STATES OF AMERICA,

Defendants.

Case No. 1:22-cv-113-HSO-RPM

Plaintiffs' Response in Opposition to Motion to Intervene

Plaintiffs—the States of Mississippi, Alabama, Arkansas, Louisiana, Missouri, and Montana and the Commonwealth of Kentucky—respond to the Motion to Intervene as Defendants filed by Movants the Greensboro Health Disparities Collaborative and the NAACP State Conferences for Alabama, Arizona, Arkansas, Kentucky, Louisiana, Missouri, Mississippi, and Montana (Doc. 61, 62) and state:

1. On May 5, 2022, Plaintiffs (along with certain individual plaintiffs) filed a complaint against Xavier Becerra, in his official capacity as Secretary of Health and

Human Services; Chiquita Brooks-LaSure, in her official capacity as Administrator of the Centers for Medicare and Medicaid Services; the Centers for Medicare and Medicaid Services; the United States Department of Health and Human Services; and the United States of America. The complaint alleged that Defendants violated federal law by adopting an Anti-Racism Rule that encourages doctors to elevate race over medical treatment.

2. On March 28, 2023, this Court granted in part and denied in part Defendants' motion to dismiss the complaint. The Court ruled, in part, that Plaintiffs "sufficiently alleged that they have standing to sue due to injury to their sovereign interest in the enforcement of their laws" and that "judicial review of whether the Anti-Racism Rule qualifies as a clinical practice improvement activity" is not precluded by federal law. *Colville v. Becerra*, 2023 WL 2668513, at *20 (S.D. Miss. Mar. 28, 2023). Subsequently, this Court ordered Plaintiffs to file their early dispositive motion for summary judgment by June 9, 2023. *See* Doc. 73.

3. On May 11, 2023, Movants filed a Motion to Intervene as Defendants and accompanying Memorandum of Law in Support. *See* Doc. 61, 62.

4. The Court should deny the Motion.

5. Plaintiffs' response is premised on the foregoing points and those set forth in their accompanying Memorandum of Authorities filed simultaneously with this Response.

FOR THESE REASONS, Plaintiffs request an order denying Movants' Motion to Intervene as Defendants.

Dated: June 8, 2023

s/ Scott G. Stewart

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Respectfully submitted,

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*pro hac vice
**pro hac vice pending
***pro hac vice forthcoming

CERTIFICATE OF SERVICE

I e-filed this opposition with the Court, which will email everyone requiring service.

Dated: June 8, 2023

s/ Cameron T. Norris